

RECREATION, LIBRARIES, & AUTHORITIES COMMITTEE

11-0430R

RESOLUTION AUTHORIZING A CONSULTING AGREEMENT WITH
CRYSTAL TAYLOR FOR THE PLANNING, COORDINATING AND
PROMOTING OF EVENTS RELATED TO THE ENGER PARK
RESTORATION PROJECT FOR AN AMOUNT NOT TO EXCEED \$20,000.

CITY PROPOSAL:

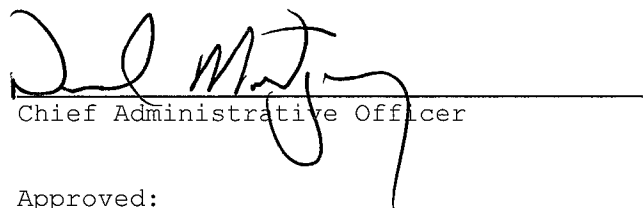
Resolved, that the proper city officials are hereby authorized to enter into an agreement with Crystal Taylor, substantially in the form of that on file in the office of the city clerk as Public Document No. _____ for the planning, coordinating and promoting of events related to the restoration of Enger Park for an amount not to exceed \$20,000, payable from Fund 110-700-1407-5441 (General, Transfers and Other Functions, Miscellaneous, Other Services and Charges).

Approved:



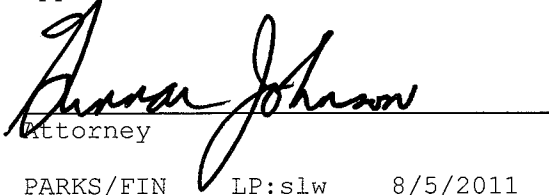
Department Director

Approved for presentation to council:



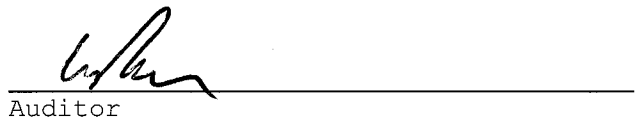
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS/FIN LP:slw 8/5/2011

STATEMENT OF PURPOSE: This resolution authorizes a consultant agreement with Crystal Taylor for the planning, coordinating and promoting of events and fundraising related to the restoration of Enger Park including working with civic and community organizations to ensure public awareness of the project and secure volunteers and sponsorships for an amount not to exceed \$20,000, payable from the general fund. Ms. Taylor will engage and organize community support for the Enger Park Restoration Project which aims to update and improve the park

facilities, accessibility, and trails. Ms. Taylor will manage, coordinate, and promote the project through events, various marketing tools, volunteer opportunities, and pursue fundraising initiatives such as the luncheon for King Harold of Norway on October 17, 2011.

AGREEMENT FOR PROFESSIONAL SERVICES

BY AND BETWEEN

CRYSTAL TAYLOR

AND

CITY OF DULUTH

THIS AGREEMENT, by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as "City," and CRYSTAL TAYLOR, an individual hereinafter referred to as "Consultant," for the purpose of rendering services to the City.

WHEREAS, Consultant is in the business of assisting clients with special event coordination;

WHEREAS, City has recently restored Enger Tower, a historical City monument and desires to promote Enger Tower and the restoration by holding special events and other activities (an "Event" or the "Events");

WHEREAS, Consultant has represented that she is qualified and willing to perform services set forth in its proposal;

WHEREAS, City wishes to engage Consultant to provide her professional services for the Events.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services to be Performed.

Consultant will provide events coordination services identified on the attached hereto as Exhibit "A." Consultant agrees that she will provide her services in cooperation with the City's Director of Public Administration (the "Director.") In the event of any conflict between the Exhibit and this Agreement, the terms and conditions of this Agreement shall be deemed to be controlling. Consultant's services to City shall be on a non-exclusive basis and the Consultant is free to engage in any other business or activity; provided that such other business or activity does not materially interfere with the performance of the Consultant's duties hereunder.

II. Fees.

It is agreed between the parties that Consultant's maximum fee for the term of this Agreement shall not exceed the sum of Twenty Thousand and 00/100th dollars (\$20,000) inclusive of all expenses, **payable** from Fund 110-700-1407-5441 (General, Transfers and Other Functions, Miscellaneous, other services and charges). Consultant's hourly rate is billed at \$28.00. All bills for services rendered shall be submitted monthly to the Director. All requests for reimbursement shall be made no more frequently than monthly and shall be accompanied by such documentation as the City shall reasonably request. Upon receipt of said request and the appropriate documentation, the City shall promptly reimburse Consultant up to the amount set forth above.

III. General Terms and Conditions.

1. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement including contract price shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.
2. Assignment. Consultant acknowledges and agrees that the personal, non-delegable skills and services of Consultant and her personal knowledge and experience are essential to the purpose of this Agreement and that City shall not accept the services of any other person in substitution of Consultant in the performance of any Services. Consultant further agrees that she will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. Except as expressly agreed in writing by the City in its soles discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support in connection with Consultant's obligations hereunder.
3. Data and Confidentiality, Records and Inspection.
 - a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
 - b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
 - c. Consultant agrees that all work created by Consultant for the City is a

“work made for hire” and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work. Consultant further agrees that to the extent the work is not a “work made for hire” Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Standard of Performance.

Consultant agrees that all services to be provided to the City pursuant to this Agreement shall be performed in a competent and workmanlike manner with the degree of skill and care which is in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.

5. Contract Period.

Consultant shall commence performance of this Agreement upon the execution thereof and performance shall be completed by December 31, 2011 unless terminated earlier as provided for herein.

The City may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.
- b. The parties do not intend by this Agreement to create a joint venture or

joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

- c. Contractor expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

Consultant agrees to defend, save harmless, and indemnify the City of Duluth, its agents, and employees from any loss, cost, or damage by reason of Personal Injury or property damage of whatsoever nature or kind arising out of, or as a result of, the performance of the work by the Consultant, its employees, agents, or subcontractors.

8. Insurance.

The Consultant represents she has workers' compensation insurance in limits in accordance with applicable law.

9. Notices

Notice to the City or Consultant provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

City

City of Duluth
Room 322 City Hall
411 W. 1st Street
Duluth, MN 55802
Attn: Lisa Potswald

Consultant

Crystal Taylor
822 Baylis Street
Apt. 105
Duluth, MN 55811

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance,

sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.

- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations.

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law.

This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure.

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral

agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH-

CONSULTANT

By

Crystal Taylor

Mayor

Date: _____

Attest:

City Clerk

Date Attested: _____

Countersigned:

City Auditor

Approved this _____ day of August
2011.

As to Form

City Attorney

EXHIBIT A

Financial Contributions

- Continue to cultivate financial supporters from private corporations, civic groups, foundations, or individuals
- Develop and submit funding proposals as needed
- Request, manage, and document donations: monetary and in kind
- Engage private organizations using specially developed campaigns or initiatives
- Recognize, thank, and identify donors accordingly

Consultant acknowledges and agrees that the City has established certain performance expectations with respect to Consultant's obligation to raise funds as described herein. In the event Consultant does not meet the following fundraising obligations, the City may in its sole discretion terminate this Agreement upon ten (10) days written notice:

- By September 1, 2011: \$60,000 committed/raised.
- By November 15, 2011: \$75,000 committed/raised

In addition, Consultant acknowledges and agrees that all funds collected are the property of the City and that all funds must be directed to and accepted by an authorized representative of the City.

Media/PR: -

- Develop and promote a community wide PR campaign for Enger Park using flyers, brochures, presentations to organizations and civic groups, prepare and present at events for public awareness as needed,
- Publicize and secure volunteers for upcoming Enger park clean up and events
- Engage in public awareness campaign to ensure project needs are publicized
- Manage social media and marketing activities related to the project

Events coordination:

- Coordinate, promote and secure sponsors for the King of Norway visit and luncheon
- Engage and work with civic, youth, and community organizations for events surrounding Enger Park restoration
- Develop, assist, and implement other related special events as requested

While Consultant may suggest marketing and promotional programs to City, Consultant

acknowledges and agrees that (a) Consultant does not have the power or authority to bind City or to assume or create any obligation, express or implied, on City's part or in City's name and any agreements shall be set forth in writing, and signed by an authorized City representative, and (b) Consultant will not represent to any person or entity that Consultant has such power or authority.